

Tribal Court/State Court Forum

Proposed Charge and Scope of Work

Proposed Charge:

The California Tribal Court/State Court Forum (Forum) is a coalition of the various Tribal Courts of the Native American Tribes situated in California and the Courts of the State of California who come together as equal partners to address issues common to both relating to the recognition and enforcement of court orders that cross jurisdictional lines, the determination of jurisdiction for cases that might appear in either court system, and the sharing of services between jurisdictions. The Forum is convened for the express purpose of improving the working relationship between its members and enabling the courts of each to issue and enforce their respective orders to the fullest extent allowed by law.

Scope of Work:

1. Information and Resource Sharing

The Forum will identify opportunities to share educational resources, develop judicial curricula, and establish a clearinghouse for the exchange of resources in order to benefit the people served by Tribal Courts and State Courts.

- *Education and training.* The Forum will identify relevant tribal and state court educational opportunities for tribal court and state court judges. The AOC will continue to make available to tribal court judges existing in-person and distance learning educational programs and materials that are available to state court judges through its secured Website. The AOC will seek funding to continue funding the attendance of tribal court judges and personnel to statewide trainings.
- *Curriculum development.* The Forum will identify gaps in state court judicial education and training materials, and advise on the development of curriculum materials to close these gaps.
- *Clearinghouse of other resources.* The Forum will identify other resources that can improve tribal court and state court relationships and support tribal court and state court capacity to serve Native Americans. Examples of the type of resources include (1) local protocols between tribal and state courts, (2) technical assistance to enhance or establish supervised visitation tribal programs, self-help tribal programs, and tribal CASA programs, (3) Judicial Council forms in a format that interested tribal courts may adapt,

(4) tribal grant opportunities, and (5) collaborative grant applications, letters of support for grant applications.

2. Jurisdictional Issues

The Forum will identify jurisdictional issues across case types in order to ensure the recognition and enforcement of Tribal Court and State Court orders.

- *Recognition and enforcement of protective orders.* Although the federal Violence Against Women Act mandates full faith and credit and enforcement for protective orders, tribal courts do not currently have an independent mechanism for entering their protective orders into CLETS (California Law Enforcement Telecommunications System) or CARPOS (California Restraining and Protective Order System). Tribal advocates and tribal judges report that law enforcement will not always recognize tribal court orders as valid court orders and enforce them.

This creates real issues in ensuring the protection of victims of domestic violence. Law enforcement typically will not enforce an order if they cannot verify it in CLETS. It would be helpful to develop a statewide solution that does not rely on local protocols for tribal court protective order entry into CLETS.

- *Recognition and enforcement of other kinds of civil orders (i.e., animal control, debt collection, housing, environment, and traffic).* Tribal court judges report that in some cases where a civil matter has been fully litigated to judgment in tribal court, the tribal court judgment may not be recognized or enforced outside the reservation. They report that some state court judges do not recognize tribal court judgments and require the matter to be essentially relitigated in state court.

Relitigating matters is not an efficient use of judicial resources and increases the cost to litigants as well. It would be helpful to develop a clear, consistent statewide procedure for enforcement of orders.

- *Recognition and enforcement of other kinds of criminal orders (i.e., crimes occurring on tribal lands)* There are many jurisdictional complexities and limitations in Indian Country which result in the lack of recognition and enforcement of criminal orders. The difficulty in determining jurisdiction and provisions for concurrent jurisdiction of certain cases can cause conflict and confusion for law enforcement, prosecution, courts, service providers, and crime victims.

3. Sharing/coordination/transfer of jurisdiction and access to records between jurisdictions.

The Forum will identify jurisdictional issues and make recommendations that will permit Tribal Courts and State Courts to effectively share/allocate/transfer jurisdiction across case types.

- *Child protection/child welfare and juvenile justice cases.* The Indian Child Welfare Act sets out a specific preference for tribal court jurisdiction and requires transfer to tribal court except where there is good cause not to transfer. State statutes restrict access to court records in these confidential proceedings.

Currently, federal and state statutes codify the Indian Child Welfare Act, and a rule of court gives guidance on implementation, including the transfer of cases from state court to tribal court. However, there is no formal mechanism for allocating shared jurisdiction or transferring a case from tribal court to state court. This can result in an inefficient use of judicial resources and potentially conflicting judgments which increase the cost of litigation and undermine tribal and state justice systems.

A state statute enumerates the individuals and entities that have access to these confidential court records. Under the statute, tribes do not have access to these records unless they have intervened as parties. This can result in tribal court placement orders putting children at risk of harm, because the tribal courts and agencies do not have the same access to information that the state court and local county agency would have.

- *Other civil cases.* In other civil cases, there may be concurrent jurisdiction.

Currently, there is no formal mechanism in place for tribal and state courts to know what cases are pending in each other's courts. Also, there is no formal mechanism for allocating shared jurisdiction, transferring cases between tribal and state court jurisdictions, and sharing records between jurisdictions. This can result in an inefficient use of judicial resources and potentially conflicting judgments which increase the cost to litigants and undermine tribal and state justice systems.

- *Probationers/parolees.* Inter-jurisdiction management of probationers/parolees

In California, it is not unusual to have probationers/parolees cross jurisdictional lines for work, family, or to relocate permanently. It would be easier to have such clients check in with the local probation department, whether tribal or state. Both tribal and state justice systems have an interest in tracking offenders.

4. Data Issues

The Forum will eliminate barriers to the collection and exchange of essential tribe-specific information and data.

- *Law enforcement, child welfare/child protection, state court case information.* Local and statewide databases do not collect tribe-specific information.

California's law enforcement agencies are first responders to calls for assistance on tribal lands, and as such, report crime-related data to the state of California. When reporting crime data in Indian Country, however, law enforcement agencies report only aggregate numbers. They are not required by statute to report data on ethnicity or tribal affiliation, or even

whether calls come from Indian reservations or other Indian lands. There is no provision or specific funding for case management systems within local and state agencies to track tribe-specific data for information relating to crime and victimization; child welfare/child protection, and state court case information.